

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MELANIE BOSTIC,

Plaintiff,

v.

AT&T OF THE VIRGIN ISLANDS,

Defendant

CIVIL NO. 1999/191-F/B

(TRANSFERRED TO ST. THOMAS)

TO: Lee J. Rohn, Esq.

Charles E. Engeman, Esq. - Fax 776-3860

ORDER GRANTING AT&T'S MOTION TO TRANSFER

THIS MATTER came for consideration on AT&T's Motion to Transfer. By Order dated January 19, 2000 the Court vacated the January 13, 2000 Order and indicated it would consider Plaintiff's opposition to transfer as contained within Plaintiff's Motion to Reconsider. AT&T filed a reply in support of its Motion to Transfer.

AT&T argues that transfer to the Division of St. Thomas and St. John is appropriate because of these factors:

1. Plaintiff was a former AT&T employee in St. Thomas and this matter is with reference with such employment. Both Plaintiff and her alleged harasser lived and worked in St. Thomas.
2. AT&T Administrative Office is located in St. Thomas. The relevant witnesses reside in St. Thomas or outside

the Virgin Islands. Any necessary AT&T records or documents are either in St. Thomas or outside the Virgin Islands.

3. Of the ten "incidents" alleged in the Complaint, only one took place in St. Croix (at a hotel) which was arguably outside the scope of employment. At least six (6) took place in St. Thomas and others occurred in either in St. Thomas or Florida.
4. The conduct underlying Plaintiff's retaliation claims occurred in St. Thomas.

In opposition, Plaintiff asserts that:

1. She owns property in St. Croix and may stay with St. Croix family during any trial.
2. Certain witnesses as to her damages reside in St. Croix.
3. AT&T has offices in both jurisdictions.
4. Plaintiff's choice of forum is entitled to great weight.

Title 28 U.S.C. § 1404(a) allows a Court to transfer an action to any other district or division where it could have been brought, if convenient to the parties and witnesses, and in the interest of justice. The decision to transfer rests within the sound discretion of the Court which must consider all the factors listed in the statute. *Van Dusen v. Barrack*, 376 U.S. 612

(1964). The Defendant has the burden of proving that an alternate forum would be more convenient for it and that Plaintiff would not be substantially inconvenienced by the transfer. Wright, Miller & Cooper FEDERAL PRACTICE AND PROCEDURE § 3848 (1991). Hence, the balance of convenience must weigh heavily in favor of the moving party before transfer is allowed. *William A. Smith Contracting Co. v. Travelers Indemnity Co.*, 467 F.2d 662, 664 (10th Cir. 1972).

Plaintiffs' privilege in choosing their own forum is also a factor to be weighed when evaluating the convenience of the parties. Wright, Miller & Cooper, at § 3828 (1991). Plaintiffs' choice of forum is entitled to paramount consideration and the burden is on the moving party to establish that a balancing of proper interests weighs in favor of transfer. *Critikon, Inc. v. Becton Dickerson Vascular Access, Inc.*, 821 F.Supp. 962, 964, (D.Del. 1993); *Kalik Enterprises, Ltd. v. Seaboard, Inc., V.I.* 383 (D.Ct. 1983).

Although Plaintiffs' choice of forum is a paramount consideration, that choice is entitled to less deference where the operative facts did not occur within that forum. See 1A Moore's Federal Practice § 0.345[5] (1994); see also, e.g., *Waller v. Burlington N.R.R.*, 650 F.Supp. 988 (N.D. Ill. 1987); *Levitt v. Maryland Deposit Ins. Fund*, 643 F.Supp. 1485 (E.D.N.Y. 1986); *Krupp Intern, Inv. v. Yarn Industries*, 615 F.Supp. 1103

(D.Del. 1985).

This matter essentially involves Plaintiff's employment in St. Thomas. The single St. Croix incident alleged in the Complaint is *de minimus* in the overall consideration thereof. Plaintiff's ties to St. Croix and the damage witnesses who may reside here are substantially less compelling than the inconvenience that AT&T would suffer if this matter proceeded in St. Croix.

Upon consideration of the factors set out in *Stewart Organization, Inc. V. Ricoh Corp.*, 487 U.S. 22, 29, the Court finds that AT&T has established that the balance of inconvenience weighs in favor of the requested transfer.

Accordingly, it is hereby;

ORDERED as follows:

1. AT&T's Motion to Transfer is GRANTED and this matter is transferred to the Division of St. Thomas and St. John.
2. Henceforth, the caption of this matter shall be as above.

ENTER:

Dated: February 2, 2000

_____/s/_____
JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST: Orinn Arnold
Clerk of Court

By: Aretha B. McFarlande
Deputy Clerk